IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE J.CHELAMESWAR**

**AND**
**THE HON'BLE MR JUSTICE GHULAM MOHAMMED**

**WRIT PETITION No.21415 OF 2002**

Between:

Visakha Prime Properties Constructions Limited,

43-36-12, Railway Station Road, Dondaparthy Junction,

Visakhapatnam – 16, represented by its Chairman and

Managing Director Sri C.Raghuram Prasad.

**..... PETITIONER**

AND

The United Commercial Bank,

Hindustan Zinc Smelter Branch,

Visakhapatnam, represented by its

Branch Manager.

**.....RESPONDENT**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to declare the action of the respondent herein in issuing the impugned proceeding dated 21.08.2002 received on 14.09.2002 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002, (hereinafter referred to as 'Ordinance' for short) in requiring the petitioner to pay all the dues to the Bank within 60 days therefrom under the threat of exercise of power under Section 13(4) as arbitrary and illegal offending Article 14 of the Constitution of India, by a writ order or direction, one more particularly, in the nature of Writ of Mandamus and set aside the

same and direct respondent not to take any coercive steps for enforcement/recovery.

**Counsel for the Petitioner : MR.D.V.SITARAMAMURTHY**

**Counsel for the Respondent : MR.V.AJAYAKUMAR**

**The Court made the following :**

**O R D E R**

(Per Sri Justice J.Chelameswar)

The broad facts of the case are that the petitioner-company borrowed amounts from the respondent-bank in connection with its business i.e. development of certain property at Station Road, Visakhapatnam. It appears that the construction work of the commercial complex is substantially completed, except some finishing works. Admittedly, the petitioner could not sell any portion of the said complex so far. In the process, the petitioner defaulted in repayment of the borrowed loan amount. As there was a default in payment of the loan amount, the respondent-bank issued a notice dated 20.02.2002 demanding payment of the entire loan amount with interest, failing which it was indicated in the said notice that appropriate proceedings would be initiated before the Debt Recovery Tribunal. We are informed that subsequently, the proceedings before the Debt Recovery Tribunal are initiated.

It appears from the counter filed by the respondent-bank and also from the additional affidavit filed by the petitioner that after some correspondence and discussions between the parties, the respondent-bank agreed for a one-time settlement of loan account. The respondent-bank by proceedings dated 02.09.2004, informed that the petitioner is required to pay an amount of Rs.84.05 lakhs on or before 06.04.2005, but the petitioner failed to pay

the amount. Thereafter, the respondent-bank issued notice under Section 13(2) of the Securitisation Act, dated 21.08.2002. Challenging the said notice, the present writ petition is filed.

The writ petition was admitted on 13.11.2002 and since then the matter is adjourned from time to time. It is stated that during pendency of the present writ petition, the above-mentioned one-time settlement has taken place between the parties.

When the matter is taken up today, Sri D.V. Sitharama Murthy, learned counsel appearing for the petitioner came forward with a submission that if nine months' time is granted, the petitioner will be able to pay the entire amount of Rs.84.05 lakhs, **less** the amount of
rupees two lakhs, which was already paid in the interregnum, towards part payment of one-time settlement.

Learned counsel also submitted that the above mentioned amount will be paid with 11% interest per annum on the above said principal amount calculated from 06.04.2005 till the date of the actual payment. However, learned counsel for the petitioner submitted that the petitioner will be in a position to make the payment as indicated above only if the respondent-bank accords necessary clearance as and when the petitioner is able to find a prospective buyer or buyers for the complex referred to earlier.

Mr.A.Ajaya Kumar, learned counsel appearing for the respondent-bank resisted the proposal made by the learned counsel for the petitioner.

Having regard to the facts and circumstances of the case, we are of the opinion that the matter can be disposed of at this stage as eventually what the respondent-bank requires is the realization of the amount advanced towards the loan, as already noticed earlier. Admittedly, the respondent-bank agreed to accept an amount of Rs.84.05 lakhs as a one-time settlement of all the dues payable by the petitioner, which opportunity the petitioner could have availed of before 06.04.2005, and the respondent-bank would have been satisfied with the receipt of the said amount.

We, therefore, deem it appropriate to direct the respondent-bank not to proceed further pursuant to the notice dated 21.08.2002 issued under Section 13(2) of the Securitisation Act, for a period of nine months from today. The petitioner undertakes to pay the above-mentioned loan amount of Rs.82.50 lakhs along with interest calculated at the rate of 11% per annum within the said period of nine months from today. However, we direct the respondent-bank to permit the petitioner to alienate the property i.e. constructions made by the petitioner at D.No.43-36-12 either as one unit or in parts. The petitioner undertakes to arrange to pay the respondent-bank in the following manner:

| S.No. | Floor | Amount |
|---|---|---|
| 1. | Ground | Rs.24,00,000/-(Rupees Twenty Four lakh only) |
| 2. | First | Rs.17,00,000/-(Rupees Seventeen lakh only) |
| 3. | Second | Rs.15,00,000/-(Rupees Fifteen lakh only) |
| 4. | Third | Rs.15,00,000/-(Rupees Fifteen lakh only) |
| 5. | Fourth | Rs.11,00,000/-(Rupees Eleven lakh only) |

As and when the petitioner is able to find a purchaser of either the entire property or any part thereof, the petitioner will intimate the details of the proposed sale, such as the area proposed to be sold and its consideration, to the respondent bank. On receipt of the same, the respondent-bank shall issue a letter of undertaking and its no objection to the proposed transaction subject to the condition that the prospective purchaser directly pays the proposed consideration into the Bank by way of demand draft. On receipt of the demand draft, the respondent-bank shall also give necessary clearances to enable the petitioner to convey the property.

The petitioner is directed to pay interest at the rate of 11% per annum on the amount outstanding i.e., Rs.82.50 lakhs or any part thereof with effect from 06.04.2005 till the date of actual final payment of the amount.

In default on the part of the petitioner to make the payment as indicated above within a period of 270 days from today, the respondent-bank would be at liberty to recover the amount due to it, discarding the one time settlement as indicated above.

With the above directions, the writ petition is disposed. There shall be no order as to costs.

---

JUSTICE J.CHELAMESWAR

---

JUSTICE GHULAM MOHAMMED

26th APRIL, 2005

**PGS**

To

1. The United Commercial Bank,

Hindustan Zinc Smelter Branch,

Visakhapatnam, represented by its

Branch Manager.

2. 2 CD copies.

**THE HON'BLE MR JUSTICE J.CHELAMESWAR**

**AND**

**THE HON'BLE MR JUSTICE GHULAM MOHAMMED**

**WRIT PETITION No.21415 OF 2002**

(Per Sri Justice J.Chelameswar)

26th APRIL, 2005